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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Towing and Recovery Operators
Virginia Administrative Code (VAC) citation	<u>24</u> VAC <u>27</u> – <u>50</u> – <u>10</u>
Regulation title	Regulations Governing Public Safety Towing and Recovery
Action title	Creation of New Regulation to govern the provision of public safety towing and recovery services.
Date this document prepared	April 4, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Board for Towing and Recovery Operators is mandated in Section 46.2-2826 of the Code of Virginia to establish regulations required of Class A and Class B operators to provide public safety towing and recovery services. For the purposes of this section, "public safety towing and recovery services" shall be those towing and recovery and related services requested by a state or local law-enforcement agency.

The Virginia Board for Towing and Recovery Operators was established by enactment of legislation (SB 134 and HB 1258), approved by the General Assembly and Governor of Virginia in the 2006 session. The Board went into effect July 1, 2006. Licensure, regulation, and enforcement of standards of practice are to go into effect on July 1, 2008.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority for licensure and regulation of towing and recovery operators is found in Chapter 28 of Title 46.2 of the Code of Virginia.

§ 46.2-2826. Public safety towing and recovery services

The Board shall establish regulations required of Class A and Class B operators to provide public safety towing and recovery services. For the purposes of this section, "public safety towing and recovery services" shall be those towing and recovery and related services requested by a state or local law-enforcement agency. Such regulations shall establish minimum requirements, including qualifications, standards, necessary equipment, and public safety concerns necessary and appropriate to permit a Class A or Class B operator to provide public safety towing and recovery services. No operator shall provide public safety towing and recovery services unless they meet such criteria established by Board regulation applicable to public safety towing and recovery services. Upon submitting evidence to the Board of meeting such criteria, the Board shall maintain, on a timely basis, a list to be readily available to state and local law-enforcement agencies of Class A and Class B operators who meet the Board's criteria for providing public safety towing and recovery services.

(2006, cc. 874, 891.)

§ 46.2-2805 General Powers of duties of Board

The powers and duties of the Board shall include, but not be limited to the following:

- 1. To establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;*
- 2. To examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration, and grading of examinations;*
- 3. To license qualified applicants as Class A or Class B operators;*
- 4. To levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board;*
- 5. To levy on licensees special assessments necessary to cover expenses of the Board;*
- 6. To revoke, suspend, or fail to renew a license for violation of this chapter or enumerated in regulations promulgated by the Board;*
- 7. To receive complaints concerning the conduct of persons and businesses licensed by the Board and to take appropriate disciplinary action if warranted;*
- 8. To enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board;*
- 9. To establish committees of the Board, appoint persons to such committees, and to promulgate regulations establishing the responsibilities of these committees;*
- 10. To establish means and procedures by which members or employees of the Board may attempt to mediate and resolve in an expedited manner, complaints filed against those licensed or otherwise regulated by the Board; and*
- 11. To do all things necessary and convenient for carrying into effect provisions of this chapter or regulations promulgated by the Board.*

(2006, cc. 874, 891.)

§ 46.2-2812 License Required

On and after July 1, 2008, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operator as provided in this chapter. Violation of any provision of this section shall constitute a Class 1 misdemeanor.

(2006, cc. 874, 891.)

§ 46.2-2824 License Required

On and after July 1, 2008, no person shall offer to engage in or engage in the towing and recovery of vehicles without a valid license from the Board.

(2006, cc. 874, 891.)

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Board for Towing and Recovery Operators was established by enactment of legislation (SB 134 and HB 1258), approved by the General Assembly and Governor of Virginia in the 2006 session. The Board went into effect July 1, 2006.

Pursuant to §46.2-2826 (Public safety towing and recovery services) of the Code of Virginia “no operator shall provide public safety towing and recovery services unless they meet such criteria established by Board regulation applicable to public safety towing and recovery services.” “Such regulations shall establish minimum requirements, including qualifications, standards, necessary equipment, and public safety concerns necessary and appropriate to permit a Class A or Class B operator to provide public safety towing and recovery services.”

Upon the operator submitting evidence to the Board of meeting such criteria, the Board shall maintain, on a timely basis, a list to be readily available to state and local law-enforcement agencies of Class A and Class B operators who meet the Board’s criteria for providing public safety towing and recovery services.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Creation of the following regulatory sections are recommended:

Purpose / Requirement for regulation

A statement of the reason for these regulations along with a citation of the statutory authority providing for said regulation.

Definitions

A listing of and definition of important words used throughout the regulation.

Fees

Language will specify any fee(s) that may be necessary for licensure or certification as a public safety towing and recovery operator.

Minimum requirements

Language will set out the basic requirements for certification.

General qualifications

Language will elaborate the requirements for certification.

Standards of practice

Language will set out the tenets of expected professional conduct for certificate holders. It will also specify certain types of activities that will result in disciplinary action by the board. Professional ethics will be addressed extensively in this section.

Equipment requirements

Language will specify the types of vehicles that may be utilized as well as what types of equipment it must carry onboard.

Public safety concerns

Language will address criminal history checks, driver conduct, bonding, and insurance.

Rights of localities

Language will specify that localities may at their discretion promulgate regulation or policy with requirements beyond those set out in these regulations.

Grounds for revocation, suspension, probation, reprimand, censure, or denial of licensure

Language will set out actions by the board to revoke, suspend, deny issuance or renewal of certification, or take disciplinary action as set out by the Code of Virginia.

Reinstatement following disciplinary action

Language will set out the steps that must be taken for the re-certification after a license has been inactive for a period of time as a result of a disciplinary action.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Pursuant to § 46.2-2826, “the Board shall establish regulations required of Class A and Class B operators to provide public safety towing and recovery services.” Further, pursuant to § 46.2-2812 of the Code of Virginia, on or after July 1, 2008 it shall be unlawful for anyone to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operator. And finally, § 46.2-2809 of the Code of Virginia authorizes the board to promulgate regulation for the effective administration and enforcement of Chapter 28 of Title 46.2.

In that there are currently no regulations for public safety towing and recovery, there is no viable alternative to establishing these proposed regulations. The only alternatives that were considered to meet the essential purpose of this action were whether to take this action via Emergency Regulations, Fast Track Regulations, or the Standard Regulatory Process. In that licensure under this Chapter is not required until 2008 it did not appear that need for these regulations met the criteria for Emergency Regulations. The Fast Track Process was considered but not utilized because there is a chance that promulgation of these regulations may result various opposing viewpoints among those with stake in this profession. Ultimately the Standard Regulatory Process was chosen because it allows for numerous opportunities for input and public comment from those with a stake or interest in the profession of towing and recovery.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Once approval to publish the Notice of Intended Regulatory Action is granted, the board will consider any comment received during its meetings and public comment periods on any proposed regulations.

Anyone wishing to submit written comments may do so at the public by mail, email or fax to Benjamin Foster, Executive Director, Board for Towing and Recovery Operators, C/O Department of Motor Vehicles, Post Office Box 27412, Richmond, Virginia 23269-0001, 804-367-0226 (telephone), 804-367-6631 (fax), Benjamin.foster@dmv.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

In that these are new regulation the board intends to allow participation by any relevant stakeholder that wishes to have a say in the proposed regulation. There are currently no plans to establish an ad hoc advisory or technical advisory committee. However, it is fully expected that there will be public participation from various towing and recovery associations in the Commonwealth (i.e. Virginia Association of Towing and Recovery Operators; Major Incident Heavy Recovery Operators Association; etc.) As this process proceeds it is quite likely that a participatory approach utilizing an ad hoc advisory or technical advisory committee may be needed.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact of the proposed regulatory action on the institution of the family and family stability.